



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 10, 1993

Mr. Robert Giddings
The University of Texas System
Office of General Counsel
201 West Seventh Street
Austin, Texas 78701-2981

OR93-518

Dear Mr. Giddings:

The University of Texas System (the "university") received a request for information concerning the use of primates in university research. Specifically, the requestor seeks four categories of information:

1. All primate necropsy reports for the period of 1990 to present;
2. All incoming and outgoing shipping invoices for primates for the same period;
3. The minutes of all Institutional Animal Care and Use Committee (IACUC) meetings relevant to the use of primates in experimentation for the same time period;
4. All correspondence, memos, or other written communication between Dr. Richard Meisch and the IACUC for the same period.

You requested a decision of this office pursuant to section 7 of the Texas Open Records Act (the "act"), V.T.C.S. article 6252-17a. You advised us that information responsive to categories 1 and 2 were made available to the requestor. You claimed, however, that sections 3(a)(1), 3(a)(8), and 3(a)(11) except the remaining information from required public disclosure. Because the decision in *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ) required reexamination of the section 3(a)(11) exception, we allowed you an additional 15 days to submit arguments in accordance with the *Gilbreath* decision. We now consider the additional arguments you have submitted for withholding the requested documents under sections 3(a)(1), 3(a)(8), and 3(a)(11) of the act. We have assigned your request ID# 18565.

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You claim that some of the requested information constitutes commercially exploitable scientific or technological working data, work product, or information that directly reveals the substance of proposed research and is made confidential by section 51.914 of the Texas Education Code. Section 51.914(1) makes confidential, in pertinent part:

(1) all information relating to a product, device, or process, the application or use of such a product, device, or process, and all technological and scientific information (including computer programs) developed in whole or in part at a state institution of higher education, regardless of whether patentable or capable of being registered under copyright or trademark laws, that have a potential for being sold, traded, or licensed for a fee.¹

You have submitted to us for review documents generated by the Animal Welfare Committee of the university's medical school at Houston, including Animal Welfare Committee minutes and various memoranda relating to research projects involving animals. As this office held in Open Records Decision No. 557 (1990), which addressed the applicability of section 51.914 to nearly identical information, the working titles of experiments do not per se constitute technological or scientific information of the kind protected by section 51.914 because such information does not on its face reveal details of the research efforts of the university or its scientists. *See also* Open Records Decision No. 497 (1988). You have not shown that release

¹Section 51.914 also makes confidential two categories of information we do not understand to be at issue here, namely:

(2) any information relating to a product, device, or process, the application or use of such product, device, or process, and any technological and scientific information (including computer programs) that is the proprietary information of a person, partnership, corporation, or federal agency that has been disclosed to an institution of higher education solely for the purposes of a written research contract or grant that contains a provision prohibiting the institutions of higher education from disclosing such proprietary information to third persons or parties; or

(3) the plans, specifications, blueprints, and designs, including related proprietary information, of a scientific research and development facility that is jointly financed by the federal government and a local government or state agency, including an institution of higher education, if the facility is designed and built for the purposes of promoting scientific research and development and increasing the economic development and diversification of this state.

of this information would reveal information directly relating to the contents of the various protocols or experiments discussed in the meeting minutes and memorandums. Likewise, you have not demonstrated that this information constitutes scientific or technological information that has a potential for being sold, licensed, or traded for a fee. We conclude, therefore, that the information submitted to us for review does not fall within the ambit of section 51.914 of the Education Code. Accordingly, the requested information may not be withheld from required public disclosure under section 3(a)(1) of the act.²

You also claim that section 3(a)(8) excepts the requested information from required public disclosure. Section 3(a)(8) excepts:

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

Section 3(a)(8) applies to "law enforcement agencies"--agencies that employ peace officers for the investigation of crimes and the enforcement of criminal laws. It does not as a general rule apply to agencies whose chief function is essentially regulatory in nature. Attorney General Opinion MW-575 (1982); Open Records Decision No. 199 (1978). However, records which otherwise qualify for the section 3(a)(8) exception, such as documentary evidence in a police file on a pending case, do not necessarily lose that status while in the custody of an agency not directly involved with law enforcement. A non-law enforcement agency may claim section 3(a)(8) with regard to information in its custody that a law enforcement agency has determined would unduly interfere with law enforcement or prosecution or that it intends to report to law enforcement officials. See Attorney General Opinion MW-575; Open Records Decision No. 493 (1988).

Putting aside the fact that the university is not a law enforcement agency within the meaning of section 3(a)(8), we nonetheless find no basis for concluding that the requested information may be withheld from required public disclosure under section 3(a)(8) of the act. While you claim that release of the requested

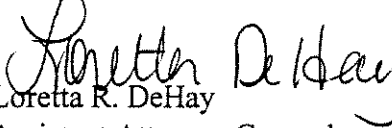
²In Open Records Decision No. 169 (1977), this office excepted from required public disclosure the addresses of certain governmental employees pursuant to privacy interests incorporated into section 3(a)(1) given the showing of exceptional circumstances indicating an "imminent threat of physical danger as opposed to a generalized and speculative fear of harassment or retribution." Open Records Decision No. 169 (1977) at 6. You argue that release of the requested information might result in property damage and the interruption of research. However, as you have not demonstrated a "imminent threat of physical danger," we have no basis for withholding any of the requested information in deference to the privacy interests of university employees.

information would "enable an individual or group to break into . . . research laboratories and interfere with . . . research," you do not explain how, nor is such apparent on the face of the documents. Furthermore, you have not indicated that a law enforcement agency has determined that release of the requested information would unduly interfere with law enforcement or prosecution or that the university intends to report the requested information to law enforcement officials. Finally, we reject your argument that section 3(a)(8) applies merely because "[a]nimal research is very controversial" and raises "security issues." Accordingly, we conclude that the requested information may not be withheld under section 3(a)(8) of the act.

Finally, you claim that the requested information is excepted by section 3(a)(11) of the act, which excepts "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993) (copy enclosed), this office reexamined the section 3(a)(11) exception in light of the *Gilbreath* decision and held that section 3(a)(11) excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. However, section 3(a)(11) does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. While the documents you have submitted for our review pertain to the policy functions of the university, some of the information contained in these documents is purely factual. We have marked those portions of the documents that may be withheld from required public disclosure under section 3(a)(11). The remainder of the requested information must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,


Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/GCK/jmn

Enclosures: Open Records Decision No. 615
Marked Documents

Ref.: ID# 18565

cc: Mr. Michael A. Budkie, A.H.T.
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(w/o enclosures)